

*What Every Member of the
Trade Community Should Know About:*

*Works of Art,
Collector's Pieces,
Antiques, and Other
Cultural Property*



An Informed Compliance Publication

February 2001

U.S. CUSTOMS

NOTICE:

This publication is intended to provide guidance and information to the trade community. It reflects the Customs Service's position on or interpretation of the applicable laws or regulations as of the date of publication, which is shown on the front cover. It does not in any way replace or supersede those laws or regulations. Only the latest official version of the laws or regulations is authoritative.

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PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or “Mod” Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are “***informed compliance***” and “***shared responsibility***,” which are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. An importer of record's failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

The Office of Regulations and Rulings has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs has issued a series of informed compliance publications, and videos, on new or revised Customs requirements, regulations or procedures, and a variety of classification and valuation issues.

The Office of Regulations and Rulings has prepared this publication on ***Works of Art, Collector's Pieces, Antiques, and Other Cultural Property*** as part of a series of informed compliance publications regarding the classification and origin of imported merchandise, and advising the public of regulations or procedures. We sincerely hope that this material, together with seminars and increased access to Customs rulings, will help the trade community to improve, as smoothly as possible, voluntary compliance with Customs laws.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 CFR Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant. Reliance solely on the information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

Stuart P. Seidel,
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Introduction

This Informed Compliance Publication discusses the requirements that apply to importations of works of art and other cultural property. In addition to the normal rules that apply to all importations, there are special rules which apply to certain types of cultural property because of international agreements, treaties, or requirements set forth in the Customs laws and tariff schedule.

General Requirements

When goods are imported into the Customs Territory of the United States (the fifty states, the District of Columbia and Puerto Rico), they are subject to certain formalities involving the U.S. Customs Service. In almost all cases, the goods are required to be "entered," that is, declared to the Customs Service, and are subject to detention and examination by Customs officers to insure compliance with all laws and regulations enforced or administered by the United States Customs Service. As part of the entry process, goods must be "classified" (determined where in the U.S. tariff system they fall) and their value must be determined. Pursuant to the Customs Modernization Act, it is now the responsibility of the importer of record to use "reasonable care" to "enter," "classify" and "value" the goods and provide any other information necessary to enable the Customs Service to properly assess duties, collect accurate statistics, and determine whether all other applicable legal requirements are met.

Classifying goods is important not only for duty purposes, but also to determine whether the goods are subject to quotas, restraints, anti-dumping or countervailing duties, embargoes or other restrictions. The act of classifying goods is complex and requires an importer to be familiar with the Harmonized Tariff Schedule of the United States (HTSUS), its 99 chapters, rules of interpretation, and notes. A detailed discussion of the HTSUS may be found in a companion publication entitled, *What Every Member of the Trade Community Should Know About Tariff Classification*. Customs valuation requirements are separately discussed in a companion publication entitled, *What Every Member of the Trade Community Should Know About Customs Value*. Both of these publications are available from the Customs World Wide Web pages on the Internet (see the Additional Information section for information on accessing these sources and obtaining additional Customs Service publications).

Classification of merchandise under the Harmonized Tariff Schedule of the United States is in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes.

The *Harmonized Commodity Description and Coding System Explanatory Notes* (referred to as E.N. or *Explanatory Notes*)¹ constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the E.N.s provide a commentary on the scope of each heading of the Harmonized System and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 FR 35127, 35128 (August 23, 1989).

Most works of art, collector's pieces, antiques, and cultural property will be classified under the provisions of Chapter 97 of the HTSUS. However, Chapter 97 does not include:

- Unused postage or revenue stamps, postal stationery (stamped paper) or the like, of current or new issue in the country to which they are destined (chapter 49);
- Theatrical scenery, studio backdrops or the like, of painted canvas (heading 5907) except if they may be classified in heading 9706; or
- Pearls, natural or cultured, or precious or semiprecious stones (headings 7101 to 7103).

Paintings, Drawings, Pastels, Collages and Similar Decorative Plaques

Although original works of art such as paintings, drawings, pastels, collages and similar decorative plaques must be declared to Customs, most of these articles are entitled to enter the Customs territory of the United States duty-free under the provisions of heading 9701.

In order to qualify under this heading, a painting, drawing, or pastel (whether ancient or modern) must be executed **entirely by hand**. However, hand drawn plans and drawings for architectural, engineering, industrial, commercial, topographical or similar provisions do not fall under this heading, but rather under heading 4906. Articles imported under heading 4906 are duty free if from a column 1 country, but are subject to a 25% *ad valorem* duty if imported from a column 2 country.² Heading 9701 does **not** apply to hand-painted or hand-decorated manufactured articles such as wall coverings consisting of hand-painted woven fabrics, holiday souvenirs, boxes and caskets, ceramic wares (plates, dishes, vases, etc.). These articles are usually classifiable

¹ The *Harmonized Commodity Description and Coding System Explanatory Notes - Second Edition* is © 1996 Customs Co-operation Council (working name: World Customs Organization (WCO)), Rue du Marché, B-1210 Brussels, Belgium.

² At the time of issuance of this publication, only products of the following countries were subject to column 2 duty rates: Afghanistan, Cuba, Laos, North Korea and Vietnam. However, this list is subject to change. In addition, temporary trade sanctions or restrictions may be in effect for products of other countries from time to time.

under their own appropriate headings and are subject to duty at the rate of the manufactured article.

The heading 9701 provisions apply to the works of art whether they are framed or unframed. Frames around paintings, drawings, pastels, collages or similar decorative plaques, are classified with those articles, provided they are of a kind and of a value normal to those articles. Frames which are not of a kind or of a value normal to the articles are classified separately and may be subject to different rates of duty.

The heading 9701 provisions do not apply to theatrical scenery or studio backdrops of painted canvas. These items are classified under heading 5907, unless they qualify as antiques over 100 years old in which case they are classified under heading 9706.

Collages and similar decorative plaques, consisting of bits and pieces of various materials, assembled so as to form a picture, design or motif and glued or otherwise mounted on a backing of wood, paper, textile or other material, are classified under subheading 9701.90.00. The backing may be plain, hand painted or imprinted. Collages range in quality from inexpensive mass-produced souvenirs to articles requiring a high degree of craftsmanship. Since there is no artist or originality requirement, the key to this provision is that the article must consist of bits and pieces (a single piece of material is excluded) forming a picture, design or motif and be mounted. See HQ 958591, dated April 5, 1996 (seashell plaque); HQ 957621, dated July 12, 1995 (nautical wall display plaque); HQ 958360, dated October 13, 1995 (skiing memorabilia shadow box).

Original Engravings, Prints and Lithographs

Original engravings, prints and lithographs (whether ancient or modern) are classified under subheading 9702.00.00. The expression "original engravings, prints and lithographs" means impressions produced directly, in black and white or in color, of one or of several plates wholly executed by hand by the artist, irrespective of the process or of the material employed by him, but excluding any mechanical or photomechanical process. Original impressions remain in this heading even if they have been retouched. The key for this provision is that the plates (or stones) must be executed entirely by hand by the artist. From the plates (or stones) numerous prints can be produced which would all be included under subheading 9702.00.0000. The prints are usually signed and numbered, although this is not a requirement. Thus, an original print might be marked "Dali, 1/75." This would be the first of 75 prints created from the original plates (or stones). All 75 would be classified under subheading 9702.00.0000.

It is often difficult to distinguish the original article from a copy, fake or reproduction, but the relatively small number of impressions and the quality of the paper may be useful guides in determining originals. On the other hand, evidence of the use of half-tone screens (in photogravure and heliogravure) and, very often, the absence of the mark left on the paper by the plate, may indicate a copy or reproduction.

This classification applies whether the engravings, prints or lithographs are framed or unframed. As in heading 9701, frames around original engravings, prints and lithographs, are classified with those articles, provided they are of a kind and of a value normal to those articles. Frames which are not of a kind or of a value normal to the articles are classified separately and may be subject to different rates of duty.

Original Sculptures and Statuary, in Any Material

Heading 9703 covers ancient or modern original sculptures and statuary in any material. In the following section we discuss which items are included, what the term “original” means, whether there are limits on how many copies can be made, and whether the sculptures must be created by an artist.

Sculptures may be in any material (stone, reconstituted stone, terra-cotta, wood, ivory, metal, wax, etc.), in the round, in relief or in intaglio (statues, busts, figurines, groups, representations of animals, etc., including reliefs for architectural purposes).

These works may be reproduced by various processes including the following:

- The artist carving the work directly from hard materials, or
- The artist modeling soft materials into figures which are then cast in bronze or plaster, or are fired or otherwise hardened or reproduced by the artist in marble or other hard materials.

In the latter process, the artist usually proceeds on the following lines:

He begins by roughing out his idea as a model, also known as a maquette, (usually on a reduced scale) in clay or other plastic material; with this as a basis, he then models a “clay form.” This “clay form” is seldom sold, but is usually destroyed after it has served for molding a very limited number of copies decided in advance by the artist, or it is placed in a museum for study purposes. These reproductions include, firstly, the “plaster model” produced directly from the “clay form.” This “plaster model” is used either as a model for the execution of the work in stone or wood, or for preparing molds for casting in metal or wax.

These two methods, casting (bronze) or carving (marble), are only two processes that can be used. Previously it was implied in the *Explanatory Notes* that these were the only two processes used. Although these are the most used, they are only two of many.

The same sculpture may be reproduced as two or three “copies” in marble, wood, wax, bronze, etc., and a few in terra cotta or in plaster. Not only the preliminary model, but also the “clay form,” the “plaster model” and these “copies” constitute original works of the artist; the copies are in fact never quite identical as the artist has intervened at each stage with additional modeling, corrections to casts, and for the

patina imparted to each article. Only rarely does the total number of replicas exceed twelve.

The heading therefore covers not only the original models made by the sculptor but also copies and reproductions of those models made by the second process described above, whether these are made by the sculptor himself or by another artist.

Additional U.S. Note 1 to Chapter 97 states that:

Heading 9703 covers not only original sculpture made by the sculptor, but also the first 12 castings, replicas or reproductions made from a sculptor's original work or model, by the sculptor himself or by another artist, with or without a change in scale and whether or not the sculptor is alive at the time the castings, replicas or reproductions are completed.

The term "original" has been judicially defined as original in design, conception and execution, as distinguished from the works of skilled craftsmen that are representative of the decorative or industrial arts.

The standard used in determining whether a creator of a work is a professional sculptor rather than a skilled craftsman is that he be a graduate of a course in sculpture at a recognized school of art (free fine art, not industrial art) or that he be recognized in art circles as a professional sculptor by the acceptance of his work in public exhibitions limited to the free fine arts. Thus, one who has not received the formal education may nevertheless be recognized as a professional sculptor by the merit of his publicly exhibited works.

The limit of sculptures that we allow under heading 9703 in an edition is 12. The reason 12 is used (previously 10) is that fine art is normally very limited. If an artist such as Edgar Degas creates 15 of a particular sculpture, only the first 12 or cast numbers 1 through 12 will be allowed in duty free. When an artist such as Salvadore Dali produces more than 50 in an edition, it is no longer fine art and none will be allowed duty free.

EXCLUSIONS:

Note 3 to Chapter 97, HTSUS, states that:

Heading 9703 does not apply to mass-produced reproductions or works of **conventional craftsmanship of a commercial character, even if these articles are designed or created by artists.**

The *Explanatory Notes* to heading 9703 explains that several items are excluded from this heading, even if they are designed or created by artists:

(a) Ornamental sculptures of a commercial character

- (b) Articles of personal adornment and other works of conventional craftsmanship of a commercial character (ornaments, religious effigies, etc.)**
- (c) Mass produced reproductions in plaster, staff, cement, paper maché, etc.**

Thus, if a professional artist produces a piece of jewelry (wearable) that is unique, it is not allowed under heading 9703, HTSUS as it is a functional object. The same holds true for furniture such as the tables and chairs created by Diego Giacometti, a recognized professional artist. They are functional and useable as furniture and not within the guidelines of heading 9703, HTSUS. They can also be considered ornamental sculptures of a commercial character. Please see HQ 963158, dated January 14, 2000 which specifically discusses functional sculptures created by Diego Giacometti.

The following Headquarters rulings also concern functional objects:

- HQ 955753, dated May 20, 1994 concerned woven straw baskets. After discussing the requirements of original sculptures, heading 9703, HTSUS, was excluded as the baskets were considered works of conventional craftsmanship of a commercial character.
- HQ 956267, dated September 19, 1994 concerned “artistic wood turnings” such as wall hangings, boxes and perfume containers. Since no proof was provided establishing the items as original and created by a professional sculptor, and since they were works of conventional craftsmanship of a commercial nature, heading 9703 HTSUS was not applicable.
- HQ 956544, dated October 19, 1994 concerned boxes covered with hand made art paper. Since the boxes were works of the decorative arts rather than the free fine arts and were functional (articles of utility), heading 9703, HTSUS was denied.
- HQ 089094, dated August 2, 1991 concerned a steamed-bent cedar box, hand-painted drum, and a Whaler's hat constructed of woven grass, bark and root. Since the three articles were all functional and considered works of the decorative arts rather than free fine arts (works of conventional craftsmanship of a commercial character), heading 9703, HTSUS was not applicable

Importer Responsibilities under Headings 9702 or 9703

An importer of merchandise under headings 9702 or 9703, HTSUS should take care to include the following information as required in 19 CFR §10.48 which provides as follows:

§10.48 Engravings, sculptures, etc.

- (a) Invoices covering works of art claimed to be free of duty under subheadings 9702.00.00 and 9703.00.00, HTSUS, shall show whether they are originals, replicas, reproductions, or copies, and also the name of the artist who produced them, unless upon examination the Customs officer is satisfied that such statement is not necessary to a proper determination of the facts.
- (b) The following evidence shall be filed in connection with the entry: A declaration in the following form by the artist who produced the article, or by the seller, shipper or importer, showing whether it is original, or in the case of the sculpture, the original work or model, or one of the first twelve castings, replicas, or reproductions made from the original work or model; and in the case of etchings, engravings, woodcuts, lithographs, or prints made by other hand-transfer processes, that they were printed by hand from hand-etched, hand-drawn, or hand engraved plates, stones, or blocks:

I, , do hereby declare that I am the producer, seller, shipper or importer of certain works of art, namely covered by the annexed invoice dated; that any sculptures or statuary included in that invoice are the original works or models or one of the first twelve castings, replicas, or reproductions made from the sculptor's original work or model; and that any etchings, engravings, woodcuts, lithographs, or prints made by other hand-transfer processes included in that invoice were printed by hand from hand-etched, hand-drawn, or hand-engraved plates, stones, or blocks.

In certain instances, the port director may waive the declaration requirement set forth in paragraph (b) of this section. An importer should check with the import specialist at the port of entry for specific entry requirements.

Philatelic and Numismatic Material and Collections

Philatelic items such as postage or revenue stamps, stamp-postmarks, first-day covers, postal stationery (stamped paper) and the like are classified under heading 9704 if they are used or if they are unused and are not of current or new issue in the country to which they are destined. Albums containing collections of such articles are treated as forming part of the collections, provided they are of a value normal to the collection.

However, unused postage, revenue or similar stamps of current or new issue in the country to which they are destined are classified under subheading 4907.00.00, and are duty free only if imported from a column 1 country. Maximum cards and first-day covers not bearing postage stamps are classified under heading 4817 or Chapter 49, respectively. Trading stamps or savings stamps given by merchants to customers and redeemable for gifts or rebates on purchases are classified under heading 4911.

Numismatic (coin and money) collections and collector's pieces are classified under heading 9705 with other types of collections (see below). For statistical purposes, gold coins are classified under the provisions of subheading 9705.00.00.30, while other coins are classified under subheading 9705.00.00.60. Coins which are so battered or bent that they are clearly fit only for re-melting are generally classified in the headings for scrap and waste metal. Coins which are legal tender in the country of issue fall in heading 7118. If they are in current circulation and are being imported for monetary purposes, they are admitted without formal entry but may be subject to currency and monetary instrument reporting requirements if an amount exceeding \$10,000 on any one occasion is brought into the U.S. Coins or medals mounted as jewelry are classified in Chapter 71 or heading 9706.

Goods produced as a commercial undertaking to commemorate, celebrate, illustrate or depict an event or any other matter, whether or not production is limited in quantity or circulation, **do not fall** under heading 9705 as collections or collectors' pieces of historical or numismatic interest unless the goods themselves have subsequently attained that interest by reason of their age or rarity.

Collections

In addition to collections and collector's pieces of numismatic interest, collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archeological, palaeontological, or ethnographic interest are also classified under heading 9705, specifically subheading 9705.00.00.90. This subheading includes, for example:

- Articles being the material remains of human activity suitable for the study of the activities of earlier generations, such as: mummies, sarcophagi, weapons, objects of worship, articles of apparel, articles which have belonged to famous persons.
- Articles having a bearing on the study of the activities, manners, customs and characteristics of contemporary primitive peoples, for example, tools, weapons or objects of worship,
- Geological specimens for the study of fossils (extinct organisms which have left their remains or imprints in geological strata), whether animal or vegetable.

Antiques

Antiques are classified under heading 9706. In order to qualify as an antique for Customs purposes, the article must be over 100 years of age at the time of importation. Whenever an article is entered for sale under heading 9706, and later determined to be not over 100 years of age, a duty of 6.6 percent *ad valorem* for articles subject to column 1-general treatment, free of duty for goods originating in the territory of Canada or a duty of 25 percent *ad valorem* for articles subject to column 2 treatment will be assessed in addition to any other duty or penalty imposed on that article under the tariff

schedule. Normally, theatrical scenery, studio backdrops or the like, of painted canvas must be classified under heading 5907, not chapter 97. However, if such items are over 100 years old, they are classifiable under this provision. Articles, such as original paintings (9701), engravings (9702) or sculptures (9703), and stamps or collections (9704 and 9705) which are classifiable under the other provisions of chapter 97, and articles such as pearls (7101) and precious or semi-precious stones (7103) are not classifiable under heading 9706, even if over 100 years old.

Provided they retain their original character, the heading includes antique articles that have been repaired or restored. For example, the heading includes antique furniture incorporating parts of modern manufacture. However, if the essential character is changed, or more than 50% of the item has been repaired or restored, the item is no longer considered an antique and is subject to duty.

Special Rules for Protected Cultural Property

A violation of a foreign export control law is not in and of itself grounds for Customs action. To qualify for protection as *cultural property*, an imported item *must* generally fall under one of the Acts listed below. Of course, if a violation of U.S. law occurs, the articles may be subject to seizure and forfeiture under U.S. law regardless of foreign law.

The Pre-Columbian Monumental Act

The *Pre-Columbian Monumental, Architectural Sculpture or Murals Act of 1972* ("Pre-Columbian Monumental Act"), 19 U.S.C. §§2091-2095 and the implementing regulations at 19 C.F.R. §§12.105-12.109 govern the importation of stone carvings and wall art that:

- are the product of a pre-Columbian Indian culture of one of the following countries: Belize, Bolivia, Columbia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Peru, or Venezuela, AND
- are pre-Columbian monumental or architectural sculptures or murals including:
 - stone monuments such as altars and altar bases, archways, ball court markers, basins, calendars, and calendrical markers, columns, monoliths, obelisks, statues, stelae, sarcophagi, thrones, zoomorphs;
 - architectural structures such as aqueducts, ball courts, buildings, bridges, causeways, courts, doorways (including lintels and jambs), forts, observatories, plazas, platforms, facades, reservoirs, retaining walls, roadways, shrines, temples, tombs, walls, walkways, wells;
 - architectural masks, decorated capstones, decorative beams of wood, frescoes, friezes, glyphs, graffiti, mosaics, moldings, or any other carving or decoration which had been part of or affixed to any monument or architectural structure, including cave paintings or designs; or

- any fragment or part of any stone carving or wall art listed in the preceding subparagraphs.

If entry into the Customs territory of the United States is sought for any articles listed above, the importer will be required to file one of the following with the port director of Customs at the time of making entry:

- A certificate, issued by the Government of the country of origin of such sculpture or mural, in a form acceptable to the Secretary of the Treasury, certifying that such exportation was not in violation of the laws of that country; or
- Satisfactory evidence that such sculpture or mural was exported from the country of origin on or before June 1, 1973; or
- Satisfactory evidence that such sculpture or mural is not an article subject to the Pre-Columbian Monumental Act and regulations.

If the required certificate or evidence is not presented to Customs, the articles may be detained for 90 days (or longer, if authorized by Customs) to allow the importer to obtain the required documentation. If the certificate or evidence is not presented in the required time period, the articles may be seized and forfeited. For purposes of this law, the term "country of origin," as applied to any pre-Columbian monumental or architectural sculpture or mural, means the country where the sculpture or mural was first discovered.

The UNESCO Convention and U. S. Implementation

The 1970 *UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property* ("UNESCO Convention"), has been implemented in the United States by enactment of the *Convention on Cultural Property Implementation Act* ("Cultural Property Act"), 19 U.S.C. §§ 2601-2613 and the adoption of regulations at 19 C.F.R. §§ 12.104-12.104i. Under the Cultural Property Act, the United States may enter into a bilateral agreement with another nation which has ratified, accepted, or acceded to the 1970 UNESCO Convention (a "State Party") or multilateral agreements with other nations to restrict the importation of archeological or ethnological materials which are in jeopardy of pillage.

Under the Cultural Property Act and regulations, no archaeological or ethnological material **designated** pursuant to 19 U.S.C. §2604 **and listed** in 19 CFR §12.104g, that is exported (whether or not such exportation is to the U.S.) from the State Party after the designation of such material under 19 U.S.C. §2604 may be imported into the U.S. unless the State Party issues a certificate or other documentation which certifies that such exportation was not in violation of the laws of the State Party. The designations may be pursuant to a bilateral or multi-lateral agreement or because of emergency action.

As of the date of publication, the U.S. had entered into agreements with State Parties imposing import restrictions on the designated cultural property listed in 19 CFR §12.104g and reproduced below:

<i>State Party</i>	<i>Designated Cultural Property</i>	<i>T.D. Number</i>
El Salvador	Archaeological material representing Prehispanic cultures of El Salvador	T.D. 95-20 extended by T.D. 00-16
Canada	Archaeological artifacts and ethnological material culture of Canadian origin	T.D. 97-31
Guatemala	Archaeological material from sites in the Peten lowlands of Guatemala, and related Pre-columbian material from the highlands and the southern coast of Guatemala	T.D. 97-81
Italy	Archaeological material of pre-Classical, Classical, and Imperial Roman periods ranging approximately from the 9 th century B.C. to the 4 th century A.D.	T.D. 01-06
Mali	Archaeological material from the Niger River Valley Region, Mali, and the Bandiagara Escarpment (Cliff) forming part of the remains of the sub-Sahara culture	T.D. 97-80
Nicaragua	Archaeological material of pre-Columbian cultures ranging approximately from 8000 B.C. to 1500 A.D.	T.D. 00-75
Peru	Archaeological artifacts and ethnological material from Peru	T.D. 97-50

In addition, the following emergency actions imposing import restrictions had been imposed on the described cultural property of State Parties listed in 19 CFR §12.104g and reproduced below:

<i>State Party</i>	<i>Cultural Property</i>	<i>T.D. No.</i>
Bolivia	Antique ceremonial textiles from Coroma	T.D. 89-37, extended by T.D. 93-34
Cambodia	Khmer stone archaeological material from Cambodia	T.D. 99-88
Cyprus	Byzantine ecclesiastical and ritual ethnological materials from Cyprus	T.D. 99-35

In addition, no article of cultural property which was **documented as being part of the inventory** of a museum or religious or secular public monument or similar institution in any State Party which was stolen from such museum, monument, or institution after April 12, 1983, or after the date of entry into force of the UNESCO Convention for the State Party, whichever date is later, may be imported into the U.S.

The term, ***archaeological or ethnological material*** means--

- Any object of ***archaeological interest***. However, no object may be considered to be an object of archaeological interest unless such subject--
 - Is of cultural significance;
 - Is at least 250 years old; and
 - Was normally discovered as a result of scientific excavation, clandestine or accidental digging, or exploration on land or under water; or in addition to the previous paragraphs;
 - Meets such standards as are generally acceptable as archaeological such as, but not limited to, artifacts, buildings, parts of buildings, or decorative elements, without regard to whether the particular objects are discovered by exploration or excavation;
- Any object of ***ethnological interest***. However, no object may be considered to be an object of ethnological interest unless the object--
 - Is the product of a tribal or nonindustrial society, and
 - Is important to the cultural heritage of a people because of its distinctive characteristics, comparative rarity, or its contribution to the knowledge of the origins, development or history of that people;
- Any fragment or part of any object referred to in paragraphs (1) or (2) above which was first discovered within, and is subject to export control by the State Party.

The term ***cultural property*** includes the following categories, whether or not any such article is specifically designated by any State Party :

- Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;
- Property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;
- Products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;
- Elements of artistic or historical monuments or archaeological sites which have been dismembered;
- Antiquities more than 100 years old, such as inscriptions, coins and engraved seals;
- Objects of ethnological interest;
- Property of artistic interest, such as:
 - Pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);

- Original works of statuary art and sculpture in any material;
- Original engravings, prints and lithographs;
- Original artistic assemblages and montages in any material;
- Rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;
- Postage, revenue and similar stamps, singly or in collections;
- Archives, including sound, photographic and cinematographic archives;
- Articles of furniture more than 100 years old and old musical instruments.

Under the Cultural Property Act, the term ***museum*** means a public or private nonprofit agency or institution organized on a permanent basis for essentially educational or esthetic purposes, which, utilizing a professional staff, owns or utilizes tangible objects, cares for them, and exhibits them to the public on a regular basis.

The Cultural Property Act applies to the Customs Territory of the United States (the fifty states, District of Columbia and Puerto Rico), the U.S. Virgin Islands and any other territory or area the foreign relations for which the U.S. is responsible.

In order to import material which has been designated, one of the following must be presented at the time of entry:

- a certificate or other documentation issued by the government of the country of origin certifying that the exportation was not in violation of the laws of that country, or
- satisfactory evidence that the designated material was exported from the State Party not less than 10 years before the date of entry and neither the person for whose account the material was imported (or any related party) contracted for, or acquired an interest in the material more than one year before the date of entry, or
- satisfactory evidence that the designated material was exported from the State Party on or before the date that the material was designated under 19 U.S.C. §2604.

Detailed requirements may be found in the regulations, 19 CFR §12.104c.

If, at the time of entry an importer cannot produce the documentary evidence to comply with the Cultural Property Act, the articles may be detained for 90 days (or longer, if authorized by Customs) to allow the importer to obtain the required documentation. If the certificate is not presented in the required time period, the articles may be seized and forfeited.

Articles of cultural property imported from any foreign country for temporary exhibition or display in not-for-profit cultural institutions within the United States may be protected by statute from civil and criminal seizure if certain requirements are satisfied prior to importation. [See: An Act to render immune from seizure under judicial process certain objects of cultural significance imported into the United States for temporary

display or exhibition, and for other purposes ("Immunity from Seizure Act"), 22 U.S.C. § 2459 and 19 C.F.R. § 12.104h(a)].

Other Stolen or Smuggled Property

Cultural property and other articles, which were stolen, smuggled into the United States, or not declared to Customs are subject to seizure and forfeiture under the Customs and related laws (18 U.S.C. §545, 19 U.S.C. §§1497, 1595a) and the persons involved in such violations may be subject to civil and criminal penalties (18 U.S.C. §§545, 2314, 19 U.S.C. §§1497, 1595a).

Chapter 97 Harmonized Tariff Schedule of the United States (2001)

WORKS OF ART, COLLECTORS' PIECES AND ANTIQUES

Notes

1. This chapter does not cover:
 - (a) Unused postage or revenue stamps, postal stationery (stamped paper) or the like, of current or new issue in the country to which they are destined (chapter 49);
 - (b) Theatrical scenery, studio backdrops or the like, of painted canvas (heading 5907) except if they may be classified in heading 9706; or
 - (c) Pearls, natural or cultured, or precious or semiprecious stones (headings 7101 to 7103).
2. For the purposes of heading 9702, the expression "original engravings, prints and lithographs" means impressions produced directly, in black and white or in color, of one or of several plates wholly executed by hand by the artist, irrespective of the process or of the material employed by him, but not including any mechanical or photomechanical process.
3. Heading 9703 does not apply to mass produced reproductions or works of conventional craftsmanship of a commercial character, even if these articles are designed or created by artists.
4. (a) Subject to notes 1 through 3 above, articles of this chapter are to be classified in this chapter and not in any other chapter of the tariff schedule.

(b) Heading 9706 does not apply to articles of the preceding headings of this chapter.
5. Frames around paintings, drawings, pastels, collages or similar decorative plaques, engravings, prints or lithographs are to be classified with those articles, provided they are of a kind and of a value normal to those articles. Frames which are not of a kind or of a value normal to the articles referred to in this note are to be classified separately.

Additional U.S. Notes

1. Heading 9703 covers not only original sculpture made by the sculptor, but also the first 12 castings, replicas or reproductions made from a sculptor's original work or model, by the sculptor himself or by

another artist, with or without a change in scale and whether or not the sculptor is alive at the time the castings, replicas or reproductions are completed.

2. Whenever an article is entered for sale under heading 9706, and thereafter determined to be not over 100 years of age, a duty of 6.6 percent ad valorem for articles subject to column 1-general treatment, free of duty for goods originating in the territory of Canada or a duty of 25 percent ad valorem for articles subject to column 2 treatment shall be assessed thereon in addition to any other duty or penalty imposed on such article under the tariff schedule.

9701		Paintings, drawings and pastels, executed entirely by hand, other than drawings of heading 4906 and other than hand-painted or hand-decorated manufactured articles; collages and similar decorative plaques; all the foregoing framed or not framed:
9701.10.00	00	Paintings, drawings and pastels
9701.90.00	00	Other
9702.00.00	00	Original engravings, prints and lithographs, framed or not framed
9703.00.00	00	Original sculptures and statuary, in any material
9704.00.00	00	Postage or revenue stamps, stamp-postmarks, first-day covers, postal stationery (stamped paper) and the like, used, or if unused not of current or new issue in the country to which they are destined
9705.00.00		Collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archeological, paleontological, ethnographic or numismatic interest
		Numismatic (collector's) coins:
	30	Gold
	60	Other
	90	Other
9706.00.00		Antiques of an age exceeding one hundred years
	20	Silverware
	40	Furniture
	60	Other

Additional Information

The U. S. Customs Service's home page on the Internet's World Wide Web, provides the trade community with current, relevant information regarding Customs operations and items of special interest. The site posts information -- which includes proposed regulations, news releases, Customs publications and notices, etc. -- that can be searched, read on-line, printed or downloaded to your personal computer. The web site was established as a trade-friendly mechanism to assist the importing and exporting community. The web site contains the most current electronic versions of, or links to:

- Customs Regulations and statutes
- Federal Register and public information notices
- The Customs Bulletin and Decisions
- Binding Rulings
- Publications including-
 - *Importing Into the U.S.*
 - other Informed Compliance Publications in the "*What Every Member of the Trade Community Should Know About:...*" series
 - *Customs Valuation Encyclopedia*
- Video Tape availability and ordering information
- Information for small businesses

The web site links to the home pages of many other agencies whose importing or exporting regulations Customs helps to enforce. The web site also links to the Customs Electronic Bulletin Board (CEBB), an older electronic system on which Customs notices and drafts were posted. Since December 1999, the CEBB has been only accessible through the web site. Finally, Customs web site contains a wealth of information of interest to a broader public than the trade community -- to international travelers, for example.

The Customs Service's web address is <http://www.customs.gov>.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 CFR Part 177, or obtain advice from an expert (such as a licensed customs broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Additional information may also be obtained from Customs ports of entry. Please consult your telephone directory for a Customs office near you. The listing will usually be found under U.S. Government, Treasury Department.

“Your Comments are Important”

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs, call 1-888-REG-FAIR (1-888-734-3247).

REPORT SMUGGLING 1-800-BE-ALERT



Visit our Internet web site: <http://www.customs.gov>